

TAB 26

THE STATE OF TEXAS v.
DEY, INC., ET AL.

JUDY WATERER
October 24, 2001

Page 1	Page 2
[1] CAUSE NO. GV002327	
[2] THE STATE OF TEXAS) IN THE DISTRICT COURT	
ex rel.)	
[3] VEN-A-CARE OF THE)	
FLORIDA KEYS, INC.)	
[4] Plaintiffs,)	
[5] VS.) TRAVIS COUNTY, TEXAS	
[6] DEY, INC.; ROXANE)	
[7] LABORATORIES, INC. and)	
WARRICK PHARMACEUTICALS)	
[8] CORPORATION,)	
[9] Defendants.) 53rd JUDICIAL DISTRICT	
[10]	
[11] ORAL AND VIDEOTAPED DEPOSITION OF	
[12] JUDY WATERER	
[13] October 24th, 2001	
[14]	
[15] ORAL AND VIDEOTAPED DEPOSITION OF JUDY WATERER,	
[16] produced as a witness at the instance of the Plaintiff	
[17] and duly sworn, was taken in the above-styled and	
[18] numbered cause on the 24th of October, 2001, from	
[19] 8:20 a.m. to 5:10 p.m., before Debra L. Sletsma, CSR	
[20] In and for the State of Texas, reported by machine	
[21] shorthand, at Vorya, Sater, Seymore & Pease, LLP,	
[22] 52 East Gay Street, Columbus, Ohio, pursuant to the	
[23] Texas Rules of Civil Procedure and the provisions as	
[24] previously set forth.	
[25]	
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[1] they, in turn, can pass that on to their customers?
 [2] A: I do not have any say over what they pass on
 [3] to their customers. My relationship is with the
 [4] wholesaler.
 [5] Q: I realize that, but it was your understanding
 [6] that this information would be distributed to
 [7] customers of wholesalers?
 [8] A: AWP was generally distributed to customers.
 [9] The wholesaler acquisition price — generally they
 [10] didn't want customers to know, because that's what
 [11] they were purchasing the product for.
 [12] Q: How many years did you hold the position as
 [13] multisource sales representative at DuPont?
 [14] A: I left DuPont in — five years ago, fivish.
 [15] Q: So from the mid '80's to roughly 1990?
 [16] A: Early '90's.
 [17] Q: Is that about the time you got your MBA?
 [18] A: Yes.
 [19] Q: Did you get your MBA while you were working
 [20] for DuPont?
 [21] A: Yes.
 [22] Q: I take it at some point you left DuPont?
 [23] A: Yes.
 [24] Q: And what company did you go to work for when
 [25] you left DuPont?

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[1] Q: And so in the — in the early '90's you moved
 [2] from Pennsylvania to Columbus to be closer to your
 [3] stepchildren?
 [4] A: It was closer to the mid '90's, but yeah.
 [5] I've been — I've been in Columbus for about five and
 [6] a half years.
 [7] Q: Okay.
 [8] A: So I think it was ninety — it was '96.
 [9] Q: In 1996 you came to work for Roxane?
 [10] A: Correct.
 [11] Q: Do you recall what month?
 [12] A: It was the first working day in July.
 [13] Q: Who hired you?
 [14] A: Ed Tupa.
 [15] Q: How did you become aware that Roxane was
 [16] hiring?
 [17] A: Ed had been courting me, if you will, for
 [18] probably six months.
 [19] Q: Did you and Ed have a previous relationship?
 [20] A: No.
 [21] Q: How did Ed first begin — strike that.
 [22] How did Ed come to know you initially?
 [23] A: A headhunter contacted me. And I am always
 [24] interested in understanding what other opportunities
 [25] are available; so if something interesting to me comes

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[1] A: Roxane Laboratories.
 [2] Q: What prompted you to make an employment
 [3] change to Roxane Laboratories?
 [4] A: Personal reasons.
 [5] Q: I don't want to pry, but was it for
 [6] geographic personal reasons or —
 [7] A: Yes.
 [8] Q: To get closer to family?
 [9] A: Yes.
 [10] Q: Are you from the Columbus area?
 [11] A: No, but my husband — my husband's kids are
 [12] out here.
 [13] Q: Okay. Well, that draws me back a little bit.
 [14] How many times have you been married?
 [15] A: One.
 [16] Q: One?
 [17] A: (Nods head affirmatively).
 [18] Q: Do you have any children?
 [19] A: No.
 [20] Q: But you have some stepchildren?
 [21] A: Yes.
 [22] Q: How many stepchildren do you have?
 [23] A: Two.
 [24] Q: How old are they?
 [25] A: 19 and 20.

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[1] up, I usually meet someone to find out what's going
 [2] on.
 [3] Q: And through the headhunter you were put in
 [4] contact with Roxane?
 [5] A: With Ed Tupa, yes.
 [6] Q: With Ed Tupa at Roxane?
 [7] A: Yes.
 [8] Q: Does Ed work for Roxane?
 [9] A: No longer, but at the time he did.
 [10] Q: Who does Ed work for now?
 [11] A: I'm not sure if he's employed or not. He's
 [12] left the company. I believe he's retired.
 [13] Q: Do you recall what Ed's job title was?
 [14] A: Vice-president, Sales and Marketing.
 [15] Q: And when you were hired, what were you hired
 [16] to do? What was your job title?
 [17] A: Manager of program development.
 [18] Q: What are the job responsibilities that
 [19] comprised manager of program development initially?
 [20] A: It was — it was a position that didn't exist
 [21] initially; so for the most part, I had to carve it
 [22] out. And it would be most appropriately described in
 [23] a more traditional version as product management.
 [24] Q: Product management?
 [25] A: I was responsible for all the marketing

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[1] activities, including development of new programs,
[2] selection of development candidates for new products
[3] under development, advertising promotion, training
[4] sales representatives, covering new launches,
[5] designing packaging, et cetera.
[6] Q: What products were you responsible for?
[7] A: At the time I got there, there were over 400;
[8] and, again, it was just the multisource line. Roxane
[9] has a brand side and a multisource side.
[10] Q: So at the time you were hired, you were hired
[11] to be the product manager; is that correct?
[12] A: I was hired to be the program development
[13] manager, whose responsibilities included —
[14] Q: Managing products?
[15] A: Yes.
[16] Q: And the products for which you were managing
[17] were over 400 multisource —
[18] A: Uh-huh.
[19] Q: — products?
[20] A: Uh-huh, yes.
[21] Q: Advertising, training, marketing — what
[22] other duties did you list? I'm sorry.
[23] A: Development, interaction with development.
[24] Q: Development meaning R&D, like creation of a
[25] drug? What do you mean by "development"?

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[1] and streamlined, so it has — it has changed
[2] dramatically over time, so I could name a lot of
[3] names.
[4] Q: Okay. Well, let's just take it year by year,
[5] then.
[6] In 1996 —
[7] A: I couldn't begin to do that.
[8] Q: You can't?
[9] A: I could not begin to tell you who signed
[10] every document.
[11] Q: Oh, I realize that. I'm not trying to be
[12] unreasonable and ask you to list every name of every
[13] person who signed a document, but the people who were
[14] most heavily involved —
[15] A: Okay.
[16] Q: — do you recall some of their names?
[17] A: For marketing it would have been me.
[18] Q: Yes.
[19] A: For senior management at various times it was
[20] Ed Tupa. At various times it was who he reported to,
[21] and that changed over time.
[22] Q: Pardon me.
[23] A: Okay.
[24] Q: Who would have — who did Ed Tupa report to
[25] initially in 1996?

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[1] A: Exactly that.
[2] Q: What about pricing?
[3] A: Pricing.
[4] Q: What was your involvement in developing
[5] pricing?
[6] A: I suggested it and had it routed for
[7] approval.
[8] Q: Would it be fair to say that you had primary
[9] input in setting pricing for your 400 multisource
[10] products?
[11] A: Yes.
[12] Q: Who oversaw — strike that.
[13] Who did you forward your pricing
[14] suggestions onto?
[15] A: Over time the group of people that had to
[16] approve it changed, but I — I would say the constant
[17] ones over time would have been marketing management,
[18] sales management, contracts management and then
[19] someone at a senior level of management.
[20] Q: Can you name specifically persons that were
[21] most involved in —
[22] A: Initially or — I mean it's — we have had
[23] very, very many changes in our company.
[24] Q: I realize.
[25] A: And our processes and procedures have evolved

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[1] A: Jerry Wojta.
[2] Q: Can —
[3] A: W-O-J-T-A.
[4] Q: Okay. Who — anyone else in senior
[5] management that was involved —
[6] A: Not that I'm aware of.
[7] Q: — to your recollection?
[8] What about in the — okay. In marketing
[9] that was you, correct?
[10] A: Correct.
[11] Q: What about in sales?
[12] A: That changed over time. The most common one
[13] would have been Rich Feldman. Rich was not there when
[14] I initially got there, but I don't recall doing price
[15] changes before he got there.
[16] Q: Do you recall doing any pricing before Rich
[17] got there?
[18] A: I don't recall. I don't recall doing price
[19] changes.
[20] Q: Who did Rich report to?
[21] A: Ed Tupa.
[22] Q: Who did Jerry report to?
[23] A: I don't know.
[24] Q: Was Jerry employed by Roxane?
[25] A: Yes. I believe he was president and COO or

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[1] something along that title line.
 [2] Q: If I can, I'm going to step back just a
 [3] second.
 [4] How many employees does Roxane have?
 [5] A: I don't know.
 [6] Q: Do you have a basic ballpark figure?
 [7] A: Not that I'd be comfortable with. It's
 [8] primarily a manufacturing site, and I'm not really
 [9] involved in the operations side. Hundreds.
 [10] Q: Let's exclude the operations side, which —
 [11] well, hold on a second.
 [12] When you say "operations," do you mean
 [13] manufacturing?
 [14] A: Yes.
 [15] Q: Okay. Nonmanufacturing employees — does
 [16] Roxane have over a hundred nonmanufacturing employees?
 [17] A: Yes.
 [18] Q: Does it have over 200 nonmanufacturing
 [19] employees?
 [20] A: I'm not sure.
 [21] Q: Okay.
 [22] A: I don't know.
 [23] Q: Other than Rich, Ed, Jerry, yourself, who
 [24] else would have been involved in prices?
 [25] A: In — in 1996 —

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[1] 1996?
 [2] A: I believe so.
 [3] Q: Who do you — strike that.
 [4] Do you know who was in charge of
 [5] launching Ipratropium bromide?
 [6] A: Tom Via was the one who did most of the work
 [7] on it.
 [8] Q: What was Tom Via's job title at that point?
 [9] A: I don't know.
 [10] Q: Were you hired to replace Tom Via?
 [11] A: No.
 [12] Q: Were you hired to take over some of Tom Via's
 [13] job responsibilities?
 [14] A: Indirectly. That wasn't the purpose of my
 [15] hiring; but a lot of his multisource responsibilities
 [16] moved over to me, yes.
 [17] Q: Why is it that Roxane created a new position?
 [18] Do you — strike that.
 [19] You said earlier that you were hired and
 [20] that a position was created when you were hired; is
 [21] that correct?
 [22] A: A created position — a need for the
 [23] responsibilities of that position were identified, so
 [24] they recruited somebody to fill that in.
 [25] Q: And do you —

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[1] Q: Yes.
 [2] A: — we would have probably — '96 — in '96 it
 [3] was routed past John Swartz as well.
 [4] Q: John Swartz?
 [5] A: Uh-huh.
 [6] Q: What was John Swartz' title?
 [7] A: He was the head of finance, I think he was
 [8] corporate controller or — I'm not positive of the
 [9] title.
 [10] Q: When you would submit your pricing decisions
 [11] for review by these individuals that we've just
 [12] listed, typically would your recommendations be
 [13] accepted?
 [14] A: I can't remember a time when they weren't.
 [15] Q: So to your memory, they were always accepted?
 [16] A: Yes.
 [17] Q: Currently this litigation, as it pertains to
 [18] Roxane, involves the drug Ipratropium bromide.
 [19] Are you aware of that?
 [20] A: Yes.
 [21] Q: Do you recall setting the price for
 [22] Ipratropium bromide when it first came on the market?
 [23] A: I wasn't employed by the company when
 [24] Ipratropium was launched.
 [25] Q: Was Ipratropium bromide launched in June of

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[1] A: They didn't like me and make up a job.
 [2] Q: Right. I understand. And then — do you —
 [3] do you have any understanding as to why there was a
 [4] need to create that job?
 [5] A: Yes.
 [6] Q: And what was that?
 [7] A: They didn't have anybody currently doing that
 [8] type of job. And in a multisource business, retail —
 [9] Roxane primarily had brand products and hospital
 [10] products. Hospital products, on the generic side, are
 [11] marketed very differently than retail products. They
 [12] were expanding their generic emphasis, and they wanted
 [13] to bring in increasing levels of expertise on the
 [14] retail side.
 [15] Q: To what extent were they expanding their
 [16] generic business?
 [17] A: I don't understand what you're asking.
 [18] Q: When you became the multisource program
 [19] development — did I get that title right —
 [20] A: More or less.
 [21] Q: — manager of program development — you
 [22] mentioned that there were 400 multisource drugs.
 [23] A: Correct.
 [24] Q: Do you have an understanding of how many
 [25] multisource drugs Roxane had, for instance, in 1995?

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[1] Do you have a basic understanding of
 [2] what city he lives in?
 [3] A: I believe he's still in Dublin.
 [4] Q: Dublin?
 [5] A: Uh-huh, yes.
 [6] Q: Is that a town nearby Columbus?
 [7] A: Columbus, yes.
 [8] Q: They're sister cities?
 [9] MR. COVAL: It's a suburb.
 [10] THE WITNESS: It's a suburb.
 [11] Q: (BY MR. ANDERSON) A suburb. Okay.
 [12] What about Jerry Wojta?
 [13] A: Wojta.
 [14] Q: Wojta.
 [15] A: He has lived in the Columbus area for many
 [16] years. I assume he still does.
 [17] Q: Is he still president and COO of Roxane?
 [18] A: No. He retired.
 [19] Q: But you believe he still lives in Columbus?
 [20] A: I believe so.
 [21] Q: Do you know when Jerry retired?
 [22] A: Couple of years after I started.
 [23] Q: 1998 sometime or —
 [24] A: I'm not good with time lines.
 [25] Q: Okay. Do you recall when Ed Tupa retired?

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[1] Q: Two words?
 [2] A: Yes, V-E-N-U-E.
 [3] Q: Is Ben Venue a subsequent company to Roxane?
 [4] A: I don't know what you mean by "subsequent."
 [5] It was acquired after Roxane was acquired.
 [6] Q: Pardon me. That was a poor question.
 [7] Is Ben Venue a subsidiary of Roxane?
 [8] A: No.
 [9] Q: Is it a subsidiary of Boehringer?
 [10] A: I don't believe that the legal definition is
 [11] "subsidiary," but it is within the corporate umbrella
 [12] of Boehringer Ingelheim.
 [13] Q: Is it your understanding that
 [14] Boehringer Ingelheim owns Ben Venue?
 [15] A: In some — yeah, in a — in a very general
 [16] way. How it's structured, I'm not —
 [17] Q: Right. I'm not — I'm not asking you for
 [18] some type of detailed analysis of the stock ownership
 [19] of Ben Venue, but it's your understanding —
 [20] A: It's privately held.
 [21] Q: Right. Well, but there's still privately
 [22] held stock.
 [23] Is it your understanding that Boehringer
 [24] owns Roxane?
 [25] A: Yes.

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[1] A: Around two years ago.
 [2] Q: Okay.
 [3] A: He left after Jerry did. There was probably
 [4] somewhere around a year separating it, but I don't
 [5] know the precise years.
 [6] Q: Who's the new president and CEO of Roxane?
 [7] A: Doesn't exist.
 [8] Q: Who's the top executive of Roxane?
 [9] A: I — I'm not sure how to answer that. There
 [10] is — the manufacturing side — it — the management
 [11] has been split up and reports to different areas, so
 [12] the production side now goes through Peter Dickinson.
 [13] Q: What about the sales —
 [14] A: Sales and marketing goes through
 [15] Tom Russillo.
 [16] Q: Can you spell Prussillo?
 [17] A: R —
 [18] Q: Oh, excuse me.
 [19] A: Russillo, R-U-S-S-I-L-L-O.
 [20] Q: Thank you.
 [21] Do you know what Tom's title is?
 [22] A: I believe it's president and COO of Ben Venue
 [23] Laboratories.
 [24] Q: Okay. President and COO of what?
 [25] A: Ben Venue.

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[1] Q: Where is Ben Venue?
 [2] A: Cleveland — or Bedford, Ohio.
 [3] Q: Bedford's a —
 [4] A: Bedroom community of Cleveland.
 [5] Q: Okay. When did Tom become — strike that.
 [6] When did Tom leave Roxane?
 [7] A: He was never at Roxane. He got bought with
 [8] Ben Venue.
 [9] Q: Okay. And the sales and marketing personnel
 [10] of Roxane report to Tom Russillo, who's at Ben Venue?
 [11] A: Correct.
 [12] Q: Okay. Are there other divisions of Roxane
 [13] that report to a senior person other than
 [14] Peter Dickinson or Tom Russillo?
 [15] A: I'm not sure. There's been a lot of
 [16] transition.
 [17] Q: When did the transition begin?
 [18] A: Transition and change has been ongoing since
 [19] I started with Roxane.
 [20] Q: The transition and change impacted the
 [21] corporate hierarchy of Roxane?
 [22] A: Yes.
 [23] Q: And that's been ongoing since you started?
 [24] A: Yes.
 [25] Q: How often would you say that job titles and

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[1] job responsibility reporting changes in Roxane?
 [2] That may be too broad, but I'm trying —
 [3] A: It's — it's constant.
 [4] Q: — okay — I'm trying to get a feel for
 [5] the — the timing of the different transitions.
 [6] A: I mean I — I can answer regarding my
 [7] management and my department.
 [8] Q: Okay. Let's start there.
 [9] How often has your management and the
 [10] people that report to you and the people that you
 [11] report to changed?
 [12] A: Very little. I started out reporting to
 [13] Ed Tupa. When he retired, I then reported to
 [14] Tom Russillo. For a brief period of about a year he
 [15] had a person that worked between he and I that, when
 [16] Tom was unable to come down to Roxane, I would report
 [17] through him to Tom; but officially, I always reported
 [18] to Tom Russillo.
 [19] Q: Okay. Unofficially, who is that person that
 [20] you would — was the go-between between you and Tom?
 [21] A: Tony Pera.
 [22] Q: How do you spell Tony's last name?
 [23] A: P-E-R-A.
 [24] Q: Who is Tony employed by?
 [25] A: Now he's employed by Akorn.

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[1] A: I'm not going to speculate. That's — I mean
 [2] I — I think everybody goes through Peter, but I'm not
 [3] positive. I'm —
 [4] Q: Is Peter employed by Roxane?
 [5] A: I believe so.
 [6] Q: Does Peter report to someone at Boehringer?
 [7] A: Yes.
 [8] Q: Do you know why the president and COO
 [9] position held by — previously held by Jerry Wojta was
 [10] dissolved?
 [11] A: No.
 [12] Q: Have you ever discussed the reason that that
 [13] position was dissolved with anyone?
 [14] A: Sure.
 [15] Q: What are your — what — what do you believe
 [16] is the reason for that, or what —
 [17] A: I believe the company is restructuring and
 [18] it's eliminating redundant positions and that it
 [19] wanted to get leadership more from its own internal
 [20] people than the people that they acquired companies
 [21] from and they felt that that position was no longer
 [22] appropriate in the restructuring. What their actual
 [23] reasons were — that's just my estimation of what it
 [24] is.
 [25] Q: Okay. Since 1996 and your involvement with

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[1] Q: Akorn Corporation?
 [2] A: I don't know.
 [3] Q: Is Akorn owned by Boehringer?
 [4] A: No.
 [5] Q: Is Akorn related in any way to Roxane?
 [6] A: No.
 [7] Q: Did Tony just take a new job with a totally
 [8] independent company?
 [9] A: Correct.
 [10] Q: Where is Akorn located?
 [11] A: I believe it's in the Chicago area.
 [12] Q: Is Akorn in the drug industry?
 [13] A: Yes.
 [14] Q: Is it a drug manufacturer?
 [15] A: I believe so.
 [16] Q: Is there — are there other people that are
 [17] on the same corporate level as Peter Dickinson and
 [18] Tom Russillo in reporting at Roxane?
 [19] A: I don't think so.
 [20] Q: Okay. Do you —
 [21] A: I'm not sure where regulatory and
 [22] QC — exactly who they report to, so I'm — I'm not
 [23] positive.
 [24] Q: Who do you suspect that regulatory and QC
 [25] report to?

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[1] Roxane, how many companies has Roxane acquired?
 [2] A: Roxane has not acquired any, to my knowledge.
 [3] Q: How many companies have been acquired by
 [4] Boehringer that have become part of the Roxane
 [5] corporate structure?
 [6] A: None that I'm aware of.
 [7] Q: Well, you mentioned that there was an effort
 [8] to remove redundant positions —
 [9] A: Uh-huh.
 [10] Q: — and persons that may have been acquired in
 [11] previous company acquisitions; is that correct?
 [12] A: I think there was a natural attrition and
 [13] that, as people retired, they structured things more
 [14] to bring their satellite companies within the
 [15] corporate umbrella.
 [16] Q: Do you have any understanding as to how long
 [17] Jerry Wojta was with Roxane?
 [18] A: Many, many years.
 [19] Q: Over ten?
 [20] A: Yeah.
 [21] Q: When — I think previously you mentioned that
 [22] Roxane had been purchased at some point in time by
 [23] Boehringer?
 [24] A: Yes.
 [25] Q: When was that? Do you know?

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[1] A: Not that I recall.
 [2] Q: Okay. And when you emphasized pharmaceutical
 [3] marketing, can you just give us a general idea of what
 [4] type of courses were in that core educational area?
 [5] A: The entire program was a program designed
 [6] specifically for pharmaceutical marketing, so all of
 [7] our case studies involved pharmaceutical interests.
 [8] Whether we were working in any of the modules, whether
 [9] it was economics or statistics, it was always
 [10] pharmaceutical based.
 [11] Q: Okay. And did any of the case — was it
 [12] case-study type approach?
 [13] A: Often, yes.
 [14] Q: Your graduate school was?
 [15] A: A portion of it, yes.
 [16] Q: And did those case studies at any time deal
 [17] with the impact of pharmaceutical marketing on
 [18] particular pharmaceutical customers or buyers?
 [19] A: Not that I recall.
 [20] Q: So it was always purely from the
 [21] manufacturer's perspective?
 [22] A: I'm not sure. It was very related to brand,
 [23] so most of the — most of the studies had to do with
 [24] how to position a brand and increase market share and
 [25] how to target customers and select the most important

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[1] for the drug and it's protected by patent, that's what
 [2] gets dispensed; so there is virtually no necessity to
 [3] get into the finance and business end unless you're in
 [4] the finance and billing department in a brand
 [5] pharmaceutical company.
 [6] Q: Okay.
 [7] A: It's very unrelated to the business skills.
 [8] It's much more clinical.
 [9] Q: Well, since you were in the sales and
 [10] marketing area of the brand side of the business, are
 [11] the finance and business aspects of the brand sales
 [12] important to the end-use customer, or at least the
 [13] end-use medical provider?
 [14] A: I would have to presume so, but it was never
 [15] anything that we really considered.
 [16] Q: Did you consider it in graduate school?
 [17] A: Not that I specifically recall, no.
 [18] Q: Have you considered it in connection with
 [19] your generic marketing business?
 [20] A: Other than the fact that we understand it's
 [21] business related and our pricing must be competitive,
 [22] no.
 [23] Q: Your dead cost has to be competitive. Is
 [24] that what you're saying, or your dead price?
 [25] A: Our offer has to be competitive with that of

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[1] customer bases and then analyze the data that you had.
 [2] Q: Okay. Well, did you learn about how to place
 [3] generics and market generics in graduate school?
 [4] A: No.
 [5] Q: So that was more on-the-job training?
 [6] A: Yes.
 [7] Q: Did you have any postgraduate school courses
 [8] or conferences or any kind of educational
 [9] opportunities in the area of generics?
 [10] A: I didn't have any college courses that
 [11] specialized in generics that I recall.
 [12] Q: Did — or have you found, now that you've
 [13] been working in the pharmaceutical industry and
 [14] emphasizing multisource and generic products, that the
 [15] marketing and the sales marketing is different than it
 [16] was for branded?
 [17] A: Oh, it's entirely different.
 [18] Q: Can you tell us in general how it's entirely
 [19] different?
 [20] A: In — on the brand side of the business your
 [21] customer is different. You are not selling to the
 [22] end-use customer. You're trying to persuade someone
 [23] to write a — to write a prescription that will
 [24] persuade someone to take it to a pharmacy that a
 [25] pharmacist will fill. If the prescription is written

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[1] our competitors.
 [2] Q: Well, how would you define your offer? I
 [3] mean doesn't — isn't the competitor or the — isn't
 [4] the customer only concerned about the bottom line
 [5] price?
 [6] A: As a generalization, yes.
 [7] Q: Okay. Are there exceptions to that
 [8] generalization?
 [9] A: Yes.
 [10] Q: Can you share some of them with us?
 [11] A: Customers value service letter — levels.
 [12] They value consistent supply. They value not having
 [13] to change vendors constantly. They value having
 [14] access to competent representation that can answer
 [15] questions and resolve issues. They value other
 [16] programs. Some of them will have education programs
 [17] that they put a high value on support of. There's a
 [18] myriad of different things.
 [19] Q: Education programs.
 [20] Can you give us an example?
 [21] A: Some of the — of the customers have internal
 [22] pharmacy education programs that they ask us to
 [23] support. Upon occasion we've done that.
 [24] Q: Have you done that for any home care-type
 [25] companies?

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[1] A: I can't answer that.
 [2] Q: When you have these discussions about pricing
 [3] and the effect of various factors, including the
 [4] Medicaid rebate, do these discussions occur in any
 [5] kind of a meeting with other people, or is it just
 [6] something that you think about yourself?
 [7] A: Okay, I'm — I missed part of that. Can
 [8] you —
 [9] Q: Okay. When you have these discussions or
 [10] these considerations that you give to the impact of
 [11] Medicaid rebates on your pricing decisions —
 [12] A: Okay.
 [13] Q: — do these discussions occur in, like,
 [14] meetings among various Roxane employees, or is it
 [15] something that you just handle on your own and make a
 [16] few phone calls if you need the information?
 [17] A: It can be handled in different ways. Most
 [18] likely, someone in contracts will identify that we're
 [19] hitting a new pricing tier that hasn't been there
 [20] before and send up a flare that says, "Are you aware
 [21] of this? Do you care about this? Do you want us to
 [22] look into it further?" And if that happens, then it
 [23] will be looked into further.
 [24] If it's a situation where that's the
 [25] price and that's what's in the market and we do it

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[1] because we don't have a choice unless we just exit the
 [2] whole market, we would probably skip the assessment or
 [3] do it retro just to see how bad we got hurt; but
 [4] prices go down, rebates get impacted.
 [5] Q: So the only time the rebate issue comes to
 [6] your attention is when somebody from contracts calls
 [7] you and talks about it. Is that it?
 [8] A: Yes.
 [9] Q: So you — it's never discussed in any kind of
 [10] a committee meeting or a working group meeting or
 [11] anything like that?
 [12] A: No.
 [13] Q: Do you have a pricing committee at Roxane?
 [14] A: On the brand side they have one, yes.
 [15] Q: How about the generic side?
 [16] A: We have very brief participation in it, and
 [17] it was so cumbersome as to be ridiculous.
 [18] Q: When did you attempt to have a pricing
 [19] committee with respect —
 [20] A: I think it was about two years ago they spent
 [21] about a year trying to put it together. And then the
 [22] first time we tried to run pricing through it,
 [23] took months and months; and in the generic industry
 [24] you make price changes daily.
 [25] Q: Who was on the pricing committee?

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[1] A: I would not be able to answer that. The
 [2] whole world.
 [3] Q: The whole world?
 [4] A: The attachments were very extensive. I don't
 [5] remember who was on a committee and who was on a
 [6] subcommittee and who was involved in creating it.
 [7] It's not something that we had a great deal of
 [8] participation or use for.
 [9] Q: Were you involved in it?
 [10] A: I attended, I believe, one meeting in
 [11] Connecticut about it.
 [12] Q: Can you recall anybody else that was involved
 [13] in it?
 [14] A: My assistant product manager represented the
 [15] multisource interests in the business.
 [16] Q: That was who?
 [17] A: Lesli Paoletti.
 [18] Q: Lesli Paoletti.
 [19] Anybody else?
 [20] A: Not that I recall.
 [21] Q: Why did you go to Connecticut for this?
 [22] A: Because that's where brand land is and that's
 [23] where the process development was being driven.
 [24] Q: Including the generic process development?
 [25] A: They were trying to fit us into their system

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[1] that was —
 [2] Q: Who is they?
 [3] A: BI Pharmaceuticals was trying to have a
 [4] uniform pricing committee for all pricing decisions.
 [5] Q: Did you — did you resist their involvement
 [6] in your pricing decisions?
 [7] A: We — did I resist their involvement in our
 [8] pricing decisions?
 [9] I — I'm not sure I understand what you
 [10] mean by that.
 [11] Q: Well, it sounds to me like Boehringer
 [12] Ingelheim was — was trying to set up a committee
 [13] where there would be Boehringer Ingelheim corporate
 [14] personnel involved in your pricing decisions. Is that
 [15] an accurate statement?
 [16] A: Yes.
 [17] Q: Did you resist it?
 [18] A: We tried to have them involved in decisions
 [19] that were appropriate for their degree of
 [20] understanding of the business and leave them out of
 [21] the other decisions. It would be ridiculous for a
 [22] brand product manager to make a decision whether or
 [23] not I can match a contract price.
 [24] Q: But doesn't Boehringer Ingelheim have final
 [25] decision-making authority on what you do?

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[1] A: My boss has final decision-making on what I
[2] do.
[3] Q: Who is that?
[4] A: Tom Russillo.
[5] Q: And he works for — for Roxane at this point
[6] in time?
[7] A: No. He works for Ben Venue Laboratories.
[8] Q: Ben Venue at this time.
[9] We need to slow down — we need to put a
[10] little pause between when you talk and I talk.
[11] So is it your testimony that
[12] Boehringer Ingelheim has no ultimate authority with
[13] respect to your pricing?
[14] A: No.
[15] Q: Do they or don't they?
[16] A: My boss reports in through somebody that —
[17] he wouldn't make a decision if it was against what his
[18] boss wants.
[19] Q: And who is his boss?
[20] A: Currently it's Warner Gerstenberg.
[21] Q: Who is he?
[22] A: His boss. I can't remember his title.
[23] Q: Where does he work — who does he work for?
[24] A: I — I know his responsibilities are
[25] overseeing all of Tom's responsibilities. I believe

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[1] stepped in for a period. He never located to Columbus
[2] or was active in any of my interactions.
[3] Q: Have you ever had any discussions with
[4] Mr. Gerstenberg regarding pricing for Roxane's generic
[5] products?
[6] A: No.
[7] Q: Earlier you testified that you were a witness
[8] in a criminal case.
[9] What was the name of the company?
[10] A: Respiratory Distributors, Inc.
[11] Q: And the individual that was indicted?
[12] A: Neil Yeager.
[13] Q: Neil Yeager.
[14] Did you know Neil Yeager?
[15] A: I came to know him through a business
[16] relationship, yes.
[17] Q: And what was his — what was his duties with
[18] RDI?
[19] A: I believe he headed up their sales. I'm not
[20] sure. My relationship with him was he was who my
[21] contact was with the company regarding our contract
[22] negotiation.
[23] Q: RDI is a group purchasing organization?
[24] A: No.
[25] Q: What is it?

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[1] he's also responsible for Boehringer Ingelheim. I
[2] don't know his exact title or —
[3] Q: Where does he live?
[4] A: He works out of the Connecticut office.
[5] Where he lives, I don't know.
[6] Q: Is he a German?
[7] A: I don't know what — I don't know whether
[8] he's a nationalized American. He does have a German
[9] accent.
[10] MR. MCCONNICO: So do I. That doesn't
[11] mean anything.
[12] THE WITNESS: At some point in his life,
[13] he was.
[14] MR. BREEN: I lived in Germany for
[15] seven years and developed it myself.
[16] Q: (BY MR. BREEN) Have you ever been to
[17] Boehringer's headquarters in Germany?
[18] A: No.
[19] Q: Do you know whether Warner Gerstenberg was
[20] ever the president and chief operating officer of
[21] Roxane?
[22] A: He may have stepped in when — I think he was
[23] for a brief period.
[24] Q: When?
[25] A: When Jerry Wojta left, I think he might have

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[1] A: It's a distributor.
[2] Q: And what kind of customers does it distribute
[3] to?
[4] A: They were a distributor to respiratory home
[5] care pharmacy.
[6] Q: Home care pharmacies?
[7] A: Yes.
[8] Q: Okay. Who do you deal with at RDI now?
[9] A: We don't deal with RDI now.
[10] Q: Why not?
[11] A: Because they're not a customer that has
[12] responded in a reliable or upright and honest manner
[13] with us, so we don't deal with them anymore.
[14] Q: How did they —
[15] A: I'm not even sure they still exist.
[16] Q: Okay. How is it that they did not respond to
[17] you in a reliable, upright and honest fashion?
[18] A: We were told that they were reselling our
[19] product to non-end-use customers.
[20] Q: What is a non-end-use customer?
[21] A: Not a pharmacy.
[22] Q: So who were they selling it to?
[23] A: Other resellers.
[24] Q: Other distributors?
[25] A: I never saw specifically who they sold it —